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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 IN RE: Bard IVC Filters Products Liability
9 Litigation,
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No. MDL 15-02641-PHX DGC

CASE MANAGEMENT ORDER
NO. 28

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13 The Court held a twelfth case management conference on November 17, 2017.
14 The conference occurred after oral argument on two motions for summary judgment.
15 The conference addressed ongoing matters identified in the parties' joint report.
16 Doc. 8851.

17 **A. Motion Hearings.**

18 The Court heard Defendants' motions for summary judgment on preemption and
19 the Booker case. In preparation for the motions hearing to be held on
20 **December 15, 2017 at 1:00 p.m.**, the Court will attempt to prepare for the next six
21 motions identified in Doc. 8172. If the Court is unable to do so, it will endeavor to notify
22 the parties before the December 15 hearing.

23 **B. Scheduling of Bellwether Trials.**

24 Plaintiffs suggested that the Court and the parties be prepared to try the Jones case
25 or another bellwether case in March if the Booker case settles. This prompted questions
26 from the Court regarding the likelihood of settling bellwether cases. As the Court stated
27 in more detail on the record, the bellwether cases have been carefully selected to
28 represent cases consolidated in this MDL. The purpose of the bellwether trials is to give

1 the parties insight into how their claims and defenses are received by juries, in the hope
2 of helping facilitate a global settlement before the cases are remanded to their original
3 jurisdictions. Selective settlements (or dismissals) of bellwether cases is inconsistent
4 with this purpose. The Court expects to try the five bellwether cases that have been
5 identified so far, and a sixth case if necessary, as mentioned in previous case management
6 orders. If the parties start eliminating bellwether cases through settlement or otherwise,
7 the Court will seriously consider whether further bellwether trials are justified. If the
8 process is not going to result in trial of a representative sample of cases, the Court's
9 likely view will be that the MDL should be terminated and all cases returned to their
10 original districts. The primary purpose of the MDL – common discovery and ruling on
11 common issues – will have been accomplished, and the added benefit of bellwether trials
12 to assist the parties in resolving the litigation globally will be lost if settlements or
13 dismissals skew the representative nature of the bellwether cases.

14 The Court also stated that it does not see any need to begin working on a second
15 group of bellwether trials. The Court's current view is that the trial of five or six cases
16 should provide the parties with ample information to achieve a global settlement if such a
17 settlement is possible.

18 **C. Scheduling for the Booker Trial.**

19 The Booker trial is set to begin on March 13, 2018. This assumes that the Court
20 can resolve the pending *Daubert* motions before that time. The Court will diligently
21 endeavor to do so. Assuming the Court can accomplish this goal, a final pretrial
22 conference will be held on **February 23, 2018 at 2:00 p.m.** In preparation for that
23 conference, the Court enters the following orders:

24 1. The attorneys who will be responsible for the trial of the case shall
25 attend the final pretrial conference. Counsel shall bring their calendars so that trial
26 scheduling can be discussed.

27 2. The parties jointly shall prepare a proposed final pretrial order and
28 shall lodge it with the Court no later than **4:00 p.m. on February 15, 2018.** Preparation

1 and lodging of the proposed final pretrial order in accordance with the requirements of
2 this order shall be deemed to satisfy the disclosure requirements of Rule 26(a)(3) of the
3 Federal Rules of Civil Procedure. The parties shall submit a copy of the proposed final
4 pretrial order to the Court in Word format to Nancy_Outley@azd.uscourts.gov.

5 3. The proposed final pretrial order shall include the information
6 prescribed in the Joint Proposed Final Pretrial Order form found at
7 www.azd.uscourts.gov under: (1) Judges' Information, (2) Orders, Forms and
8 Procedures, and (3) David G. Campbell. Information shall not be set forth in the form of
9 a question, but shall be presented in concise narrative statements.

10 4. The Court will not allow the parties to offer any exhibit, witness, or
11 other evidence that was not disclosed in accordance with the provisions of this order and
12 the Federal Rules of Civil Procedure and listed in the proposed final pretrial order, except
13 to prevent manifest injustice. Fed. R. Civ. P. 16(e). Objections to witnesses and
14 documents should also be listed.

15 5. Plaintiffs shall have the burden of initiating communications
16 concerning the proposed final pretrial order.

17 6. The parties shall (a) number and mark exhibits in accordance with
18 the Exhibit Marking Instructions at www.azd.uscourts.gov under Judges and Courtrooms
19 and Orders, Forms and Procedures (such numbers shall correspond to exhibits numbers
20 listed in the proposed final pretrial order); (b) meet in person and exchange marked
21 copies of all exhibits to be used at trial no later than **14 days** before the submission
22 deadline for the proposed final pretrial order; and (c) eliminate any duplicate exhibits
23 while meeting to exchange exhibits.

24 7. The parties shall file and serve all motions in limine no later than
25 **January 26, 2018**. Responses to motions in limine shall be filed on or before
26 **February 9, 2018**. Each motion in limine shall state with precision the evidence that is
27 the subject of the motion. The motions and responses must be concise and shall not
28 exceed three (3) pages in length. No replies shall be filed. Counsel shall be prepared to

1 argue the merits of such motions at the final pretrial conference. (Each side indicated that
2 it wishes to file one motion in limine longer than 3 pages. Permission is granted for one
3 such motion from each side.)

4 8. The parties shall complete the following tasks by the time of the
5 lodging of the proposed final pretrial order:

6 (a) The parties shall file a concise, stipulated description of the
7 case to be read to the jury panel during voir dire (no longer than 2 or 3 paragraphs).

8 (b) The parties shall jointly file a proposed set of voir dire
9 questions. The voir dire questions shall be drafted in a neutral manner. To the extent
10 possible, the parties shall stipulate to the proposed questions. If the parties have any
11 disagreement about a particular question, they shall state the reason for their objection
12 below the question. The parties shall also provide, for the purposes of voir dire, a joint
13 master list of the witnesses who may be called at trial.

14 (c) The parties shall file proposed jury instructions in accordance
15 with “Guidelines for Jury Instructions in Civil Cases” found at www.azd.uscourts.gov
16 under: (1) Judges and Courtrooms, (2) Orders, Forms and Procedures, and (3) David G.
17 Campbell.

18 (d) Each party shall file a proposed form of verdict, including any
19 proposed special verdict forms or juror interrogatories.

20 (e) The joint statement of the case, proposed voir dire questions,
21 proposed jury instructions, and forms of verdict shall be submitted in Word format to
22 Nancy_Outley@azd.uscourts.gov.

23 9. In order to facilitate the creation of an accurate record, the parties
24 shall file a “Notice to Court Reporter” **one week before trial** containing the following
25 information that may be used at trial:

26 (a) Proper names, including those of witnesses.

27 (b) Acronyms.

28 (c) Geographic locations.

1 (d) Technical (including medical) terms, names or jargon.

2 (e) Case names and citations.

3 (f) Pronunciation of unusual or difficult words or names.

4 10. Counsel shall review Judge Campbell's statement of Trial Conduct
5 and Decorum before the final pretrial conference. A copy can be found on the Court's
6 website at www.azd.uscourts.gov under: (1) Judges and Courtrooms, (2) Orders, Forms
7 and Procedures, and (3) David G. Campbell.

8 11. Full and complete compliance with this Order shall be required by
9 the Court.

10 **D. Jury Questionnaire.**

11 The Court and the parties discussed whether a jury questionnaire would be
12 appropriate for the Booker case. The parties will confer on this issue. If they conclude a
13 questionnaire would be helpful, they shall present a proposed questionnaire to the Court
14 prior to the **December 15, 2017** conference discussed below.

15 **E. Mature Cases.**

16 The parties and the Court discussed whether case-specific discovery should occur
17 in what have previously been referred to as "mature cases" – ten or so cases that were
18 close to trial when this MDL was organized. The Court anticipates that the parties and
19 the Court will be busy over the next few months preparing for motions hearings and trial.
20 The Court concludes that case-specific discovery in the mature cases should await their
21 remand, and will not authorize such discovery now.

22 **F. Meetings of Counsel in Preparation for Trial.**

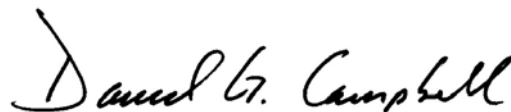
23 Plaintiffs suggested that the Court schedule meetings for the parties to discuss trial
24 preparation and how to expedite trial. The Court will leave it to the parties to schedule
25 such meetings.

26 **G. Next Case Management Conference.**

27 The Court will hold another case management conference after the motions
28 hearing on **December 15, 2017**. The parties shall file a joint status report five days

1 before the conference.

2 Dated this 21st day of November, 2017.

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David G. Campbell
United States District Judge